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No. 1113

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

JAN T. BATA, individually and as a representative of Jan A. Bata, deceased,

Petitioner,

v.

CENTRAL-PENN NATIONAL BANK OF PHILADELPHIA

and

THOMAS J. BATA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA

BRIEF IN OPPOSITION FOR RESPONDENT THOMAS J. BATA

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Central-Penn National Bank of Philadelphia

and

Thomas J. Bata,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA

BRIEF IN OPPOSITION FOR RESPONDENT THOMAS J. BATA

Opinions Below

The successive opinions of the Court of Common Pleas of Philadelphia County are unreported. They are printed in the Record as follows:

Opinion dated July 23, 1964 (68-71);*
Opinion dated January 6, 1965 (684-685);

* This and similar references are to the page numbers (stamped at the bottom of each page) of the certified record from the Supreme Court of Pennsylvania.

Opinion dated October 18, 1965 (871-872) (also in Appendix B to the Petition, 8a-9a);
Opinion dated January 28, 1966 (865-869) (also in Appendix B to the Petition, 2a-6a);
Supplemental Memorandum Opinion dated February 2, 1966 (870) (also in Appendix B to the Petition, 7a).

The opinion of the Supreme Court of Pennsylvania is reported at 423 Pa. 373, 224 A. 2d 174 (1966) and is printed in Appendix B to the Petition, 12a-22a. A petition for reargument was denied by the Supreme Court of Pennsylvania without opinion on December 6, 1966 (1242; 423 Pa. 373, 224 A. 2d 174).

Jurisdiction

Respondent Thomas J. Bata submits that there is no jurisdiction to review the judgment below since the federal question purported to be raised was not timely presented to the State Court.

Questions Presented

1) Did petitioner properly raise in the State Court the claim which he now asserts based on the Due Process Clause of the Fourteenth Amendment to the United States Constitution?

2) Did the State Trial Court, in ordering petitioner to complete performance of his admitted obligations under a comprehensive settlement agreement entered into by the parties after fifteen years of exhaustive litigation, deny petitioner property without due process of law under the United States Constitution when, after a series of hearings, it rejected petitioner's alleged defense to the action based

on unparticularized charges of "fraud" respecting the prior litigation, which charges had been asserted by petitioner in the prior litigation and abandoned by him before the execution of the comprehensive settlement agreement?

Statutes Involved

The statutes involved are Section 1257(3) of the Judicial Code (28 U. S. C. § 1257(3)) and Rule 1019(b) of the Pennsylvania Rules of Civil Procedure, set out in Appendix A to this brief.

Statement

Respondent Thomas J. Bata* commenced this action in the Court of Common Pleas of Philadelphia County, Pennsylvania, in July, 1963, to enforce a comprehensive settlement agreement concluded in Philadelphia on March 27, 1962 and substantially performed by petitioner and respondent.**

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* As in the Petition, we refer for convenience both to Jan A. Bata, who died on August 23, 1965, and to his son Jan T. Bata, who was duly substituted as a party defendant to represent his father's estate, as "petitioner", and to respondent Thomas J. Bata, as "respondent".

** The performance by the parties in Mareh 1962 of their agreement included:

(a) the immediate payment of $2,700,000 cash by respondent to petitioner (24, 540, 593);

(b) the delivery by the parties to each other of stock certificates and instruments of assignment of interests in various Bata companies (24-25; and see, *e.g.*, 238-248, 593);

(c) the exchange of comprehensive general releases (24-25, 26-27, 196-217, 466-488, 593);

(d) the exchange of more than 150 special releases (27-32; and see, *e.g.*, 269-417, 593) and

(e) the delivery of stipulations and consents for the termination of each of the thirteen lawsuits then pending between the parties (27, 32-35, 418-465, 593).

The comprehensive settlement agreement, which comprised more than 200 documents (196-558), terminated fifteen years of continuous litigation between petitioner and respondent in the courts of New York, Delaware, Switzerland and various other jurisdictions around the world.*

Respondent fully performed all of his obligations under the settlement agreement, including the payment to petitioner of $2,700,000 in March 1962 and the deposit in escrow of an additional $700,000, which was to be delivered to petitioner upon the performance of additional undertakings. Petitioner carried out most of the provisions of the settlement agreement at the time of its execution but thereafter, in February 1963, attempted to repudiate his remaining obligations under the settlement agreement. Nevertheless, in June 1963 petitioner ratified the agreement by performing one of his remaining obligations and received an additional $200,000 from the escrow. Since then, petitioner has refused to take the steps necessary to complete performance

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* A summary of the prior litigation is set forth in Appendix B to this brief, pp. B1-B3. These suits, litigating the question of ownership and control of the Bata shoe companies, had resulted in three final judgments in respondent's favor by the courts of New York, Delaware and Switzerland declaring that respondent and his mother were entitled to the property in dispute. *Bata* v. *Chase Safe Deposit Co.*, 99 N.Y.S. 2d 535 (Sup. Ct. 1950), *aff'd sub nom. Bata* v. *Bata*, 279 App. Div. 182, 108 N.Y.S. 2d 659 (1951), *aff'd*, 306 N.Y. 96, 115 N.E. 2d 672 (1953); *Bata* v. *Jucker*, District Court of Zurich, Civil Action No. 1435-1947 (1951), *aff'd*, Superior Court of the Canton of Zurich (1957); *Bata* v. *Hill*, 139 A. 2d 159 (Del. Ch. 1958), *aff'd sub nom. Bata* v. *Bata*, 163 A. 2d 493 (Del. 1960), *reargument denied*, 170 A. 2d 711 (1961), *cert. denied*, 366 U.S. 964 (1961) (No. 996, Oct. Term 1960).

In addition, petitioner's assignee commenced another action after the execution of the settlement agreement, and in direct violation of petitioner's settlement undertakings, in the District of Columbia (Petition, 8), which resulted in a judgment against petitioner's assignee. *Nash* v. *N.V. Nederlandsche Schoen-en Lederfabrieken Bata-Best* (Civ. 723-63, D.D.C. 1963), *aff'd* (D.C. Cir. 1964), *cert. denied*, 379 U.S. 963 (1965) (No. 586, Oct. Term 1964).

of the agreement on his part.* This suit, seeking to compel the completion of performance, followed.

Extensive documentary materials, including all of the documents comprising the 1962 comprehensive settlement agreement, were annexed to the pleadings filed by the parties in this action (15-43; 93-103; 169-588; 611-658; 710-796; 907-918). Petitioner admitted the authenticity of these documents and thereby the central and controlling facts upon which this suit was based. Petitioner's continuous effort throughout the lawsuit was to avoid performance of his remaining admitted obligations under the agreement by asserting charges of "fraud" in connection with the litigation which had preceded the settlement—charges which petitioner had made during the preceding litigation (characterized by petitioner's present counsel in November 1961 as a "colossal fraud" upon the courts),** and which petitioner and his present counsel had specifically abandoned by negotiating and concluding the comprehensive settlement agreement in March 1962.

Over a period of more than two years, the Trial Court (Hon. Eugene V. Alessandroni, President Judge of Common Pleas Court No. 5 of Philadelphia County) examined a series of five pleadings and proposed "amended" pleadings filed by petitioner, each containing vague unspecified and unsupported charges of "fraud" with respect to the preceding litigation (892, 893, 897-899, 77-79, 85, 591-592, 687, 826).*** In reviewing each of these allegations, the Trial Court had before it substantial portions of the records and exhibits involved in the prior litigation (see, *e.g.*, 1042-1044). In addition, the Trial Court heard oral argu-

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* See Appendix B, pp. B4-B5.

** See Appendix B, p. B3; 1037-1038.

*** A chronology of the proceedings before the Trial Court is set forth in Appendix B, pp. B6-B17.

ment on a number of occasions, and considered extensive briefs filed by the parties. The Court thereupon concluded that all of the charges and arguments made by petitioner had been known to him during the litigation which preceded the execution of the comprehensive settlement agreement, and had been rejected by the courts or abandoned by him. The Trial Court rendered interim decisions on July 23, 1964, January 6, 1965 and August 4, 1965, and finally on September 9, 1965 ordered judgment on the pleadings for respondent. Thereafter, on the basis of additional oral argument and briefs, the Trial Court denied petitioner's motion further to amend his answer and on October 18, 1965 directed the entry of judgment for respondent. The Court's opinion was subsequently filed on January 28, 1966.

The Court concluded that petitioner had failed completely to raise any issue of substance which would constitute a defense to the action, since under Pennsylvania law petitioner's empty use of the epithets "fraud" and "fraudulent" was meaningless and, in the words of the Court, "an exercise in obfuscation" (867). Petitioner had not only negotiated and entered the comprehensive settlement in March, 1962, he had subsequently ratified it in June of 1963 when, after refusing to cooperate in completing performance, he had carried out certain of its remaining terms and received an additional $200,000 under the settlement. It was apparent that his charges were designed simply to drag out the proceedings and delay the performance of his admitted remaining obligations (71; 685). Accordingly, Judge Alessandroni (twenty-seven months after commencement of the action) granted judgment to respondent (871-875; Petition, 8a-11a).

The Pennsylvania Supreme Court affirmed each of the Trial Court's actions. The Supreme Court also concluded that petitioner's charges failed to meet the requirements of particularity in pleading fraud set forth in the Pennsyl-

vania Rules of Civil Procedure and that petitioner's alleged defense of "fraud" was in reality a sham.

The judgment for respondent was affirmed unanimously by the Supreme Court of Pennsylvania on November 15, 1966. Thereafter, petitioner moved for reargument, asserting for the first time in this action that the grant of judgment on the pleadings by the Trial Court deprived him of due process of law under the United States Constitution. The petition for reargument was denied by the Supreme Court of Pennsylvania without opinion on December 6, 1966.

Reasons for Denying the Petition

I.

The federal claim asserted in petitioner's pleading (86), upon which he predicates his jurisdictional argument (Petition, 2), is totally unrelated to the claim which he now asserts—that he was denied "due process of law" under the Fourteenth Amendment by not being permitted sufficient opportunities to produce materials with which to attack the prior judgments.

Petitioner's present theory was completely ignored in his brief and argument to the Supreme Court of Pennsylvania, and was advanced for the first time in his petition for reargument to the Pennsylvania Supreme Court (1240).

It is established law that a federal question raised for the first time on a petition for rehearing or reargument in the State Supreme Court, when such an argument could have been anticipated at an earlier stage, comes too late. *Radio Station WOW, Inc.* v. *Johnson,* 326 U.S. 120, 128-29 (1945); *American Surety Co.* v. *Baldwin,* 287 U.S. 156,

163-64 (1932); *McMillen v. Ferrum Mining Co.*, 197 U.S. 343, 347 (1905). Here the Pennsylvania Supreme Court denied petitioner's petition for reargument without opinion, having no reason to consider this newly-raised federal question. Petitioner has totally failed to offer any reason why the State court judgment is not based on an adequate and independent non-federal ground, and this Court should therefore refuse to accept jurisdiction. *Citizens National Bank v. Durr*, 257 U.S. 99, 106 (1921).

II.

It is apparent that petitioner's assertions here raise no substantial federal question, and not once in his Petition does petitioner suggest any reason why this case is deserving of review by this Court. The thrust of petitioner's argument is simply that the Pennsylvania courts failed to disregard established law and failed to hold that petitioner's unparticularized and unsubstantiated assertions of "fraud" constituted a valid defense to an action to compel performance of the comprehensive settlement agreement.

III.

Petitioner's argument that he has been denied due process because the Pennsylvania courts "automatically gave *res judicata* effect" to judgments rendered in respondent's favor in the prior litigation between the parties misconceives both the basis of this action and the grounds of the decision of the Pennsylvania courts (Petition, 3, 4, 13-20).

It has been clear from its beginning that this suit was not brought to enforce prior decisions of other states in

respondent's favor. It was brought to enforce the comprehensive settlement agreement—an agreement concluded and substantially performed by the parties after petitioner had had every opportunity to assert his claims to ownership and control of the Bata companies and after he had made every attempt to contest the judgments rendered by the courts against him.

The decisions of both of the courts below were predicated upon the admitted existence of the comprehensive settlement (865, 1226-1227) (although petitioner not once mentions that agreement in his petition to this Court). The question before the Pennsylvania courts was not the effect to be given prior judgments, but rather whether petitioner had set forth in his various answers and proposed amended answers averments which were sufficient to raise a defense under Pennsylvania law (the law specifically chosen by the parties to govern their agreement) (552, 553). It was held by both the Trial Court and by the Pennsylvania Supreme Court that petitioner had raised no defense.

This conclusion was based upon a number of grounds, all supported by Pennsylvania law:

> (1) that empty and unspecified charges of "fraud" are meaningless and offer no basis for avoiding or delaying the performance of solemn contractual obligations (1229-30; Petition, 15a);
>
> (2) that settlement agreements are entitled to particular sanctity in this respect (1236; Petition, 22a);
>
> (3) that a party may not upset his own agreement by averments and charges of which he had full knowledge at the time he entered into the agreement (1233; Petition, 19a);

(4) that a subsequent ratification further prohibits a party from seeking to undo the transactions which he voluntarily entered (1231; Petition, 17a); and

(5) that after twenty years of virtually constant litigation, and after the conclusion and substantial performance of a settlement, there should be an end to controversy (1236; Petition, 22a).

Petitioner does not dispute that Pennsylvania practice, like the procedure applicable in most states, and like the Federal Rules of Civil Procedure, requires that fraud be pleaded with sufficient particularity to insure that the word "fraud" is not simply being interposed by the pleader as a mechanism of delay (Pa. R. Civ. P. 1019(b); Fed. R. Civ. P. 9(b)), and that empty allegations of "fraud" without adequate factual averments to support them are meaningless. *Sokoloff* v. *Strick*, 404 Pa. 343, 172 A. 2d 302 (1961); *Hornsby* v. *Lohmeyer*, 364 Pa. 271, 72 A. 2d 294 (1950); *Rice* v. *Braden*, 243 Pa. 141, 89 Atl. 877 (1914).

As the Trial Court noted in its opinion of July 23, 1964:

> "This controversy has been in litigation for many years, in many jurisdictions throughout the world. If the fraud allegedly perpetrated was of the 'gross proportion' claimed by defendant Bata, he must have sufficient information to plead same." (70)

Petitioner also does not deny that the subsequent ratification of a settlement, with full knowledge of his claims, precludes a party from later asserting those claims to avoid his obligations. *Emery* v. *Third National Bank*, 314 Pa. 544, 171 Atl. 881 (1934); *O'Reilly* v. *Reading Trust Co.*, 262 Pa. 337, 105 Atl. 542 (1918).

Petitioner's claim that he has been denied "his day in court" at this stage, after twenty years of virtually constant

litigation between the parties, is outrageous (Petition, 18, 19). Petitioner has had his day in court and had it over and over and over again. Even a reading of the summary of litigation preceding the settlement* reveals, in the words of Judge Alessandroni, "a thoroughly litigated issue in many jurisdictions, both domestic and foreign" (84). It was only after his claims had been thoroughly aired, considered and rejected by the courts that petitioner came to the conference table and through his present counsel, over a two-month period, negotiated a complete compromise of the controversy between the parties (182-195).

Even then, this was not the end of the matter. Upon petitioner's refusal to perform his admitted obligations under the settlement agreement he was accorded an additional period of more than two years within which to present to the Pennsylvania court some valid justification for his refusal. Despite the opportunity to file four separate pleadings in response to the complaint, and despite the continual opportunity to present to the Trial Court any factual material which he could find to justify his conduct, petitioner was unable to raise any defense to the action.

It was apparent that everything petitioner could possibly say had been said. As Judge Alessandroni summed up in his final opinion:

> "If there was ever a controversy more completely litigated than this one, we are unaware of it." (868)

His statement echoes the conclusions reached by the Delaware Supreme Court in denying petitioner's petition for reargument there almost five years earlier,** and by Mr. Justice Greenberg of the New York Supreme Court in deny-

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* See Appendix B, pp. B1-B3.

** *Bata* v. *Hill*, 170 A. 2d 711, 716 (Del. 1961).

ing petitioner's attempt to launch a new discovery there later in 1961.*

No purpose would now be served by asking the Pennsylvania courts to review once again the same claims which have been considered many times by the courts in prior actions, fully aired at a series of extended hearings before the Trial Court in this action and completely rejected as any justification for petitioner's delay in carrying out his clear settlement obligations. After fifteen pre-settlement years of litigation, after the parties in 1962 entered into a comprehensive settlement agreement, after petitioner in 1963 ratified the agreement, and now after almost four more years of litigation generated by petitioner's refusal to carry out his obligations, this controversy should be ended.

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* *Bata* v. *Bata a.s. Zlin*, Index No. 32473—1948 (N.Y. Sup. Ct., N.Y. County, Oct. 18, 1961): "The basic issue involved in the present case has been litigated and relitigated in the courts of this state, and the State of Delaware . . . . To permit this examination and discovery would constitute a re-examination of the same issues upon which examination has been had in this jurisdiction and in other jurisdictions. The application is without merit."

CONCLUSION

The petition for a writ of certiorari to the Supreme Court of the Commonwealth of Pennsylvania should be denied.

Respectfully submitted,

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